

**IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI**

COLUMBIA MISSOURI NATIONAL)	
EDUCATION ASSOCIATION, et al.,)	
)	
Plaintiffs,)	No. 19BA-CV01632
v.)	
)	Div. 4
COLUMBIA SCHOOL DISTRICT NO. 93,)	
)	
Defendant.)	

PRELIMINARY INJUNCTION FINDINGS, CONCLUSIONS, AND ORDER

After careful consideration of the parties' briefing, evidence, and oral argument with respect to Plaintiffs' Motion for Preliminary Injunction, the Court finds and orders as follows:

1. Article I, Section 29 of the Missouri Constitution provides that employees "shall have the right to organize and bargain collectively through representatives of their own choosing."

2. Prior to August 28, 2018, the Missouri Public Sector Labor Law, Sections 105.500-105.525, RSMo. (2017), established procedures for some public employees to request the State Board of Mediation ("SBM") to conduct an election for the selection of a bargaining representative. However, the version of this statute in effect prior to August 28, 2018 excluded teachers from coverage by the SBM. Section 105.510, RSMo. (2017).

3. In the absence of a statutory framework for public employees to select a bargaining representative, it is the role of the public employer "to set the framework" for its employees to choose a bargaining representative and bargain collectively. *Independence-NEA v. Independence School District*, 223 S.W.3d 131, 136 (Mo. 2007).

4. In October, 2012, Defendant Columbia School District No. 93 (“District”) arranged for the League of Women Voters to run an election for teachers to choose whether or not they wanted to be represented by Plaintiff Columbia Missouri National Education Association (“CMNEA”). A majority of teachers chose to be represented by CMNEA, and the District certified CMNEA as the exclusive bargaining representative of teachers.

5. The District and CMNEA successfully bargained labor agreements between 2012 and 2018.

6. In 2018, the General Assembly enacted and the Governor signed House Bill 1413 (“HB 1413”), which extensively revised the Missouri Public Sector Labor Law, Sections 105.500 – 105.598, RSMo. (2018).

7. HB 1413 requires that public labor organizations like CMNEA obtain initial certification through an election before the SBM, and triennial recertification through an SBM election thereafter. Section 105.575, RSMo. (2018).

8. The District continued to bargain with CMNEA during the term of the parties’ current labor agreement, which expires on June 30, 2019. However, the District notified CMNEA of its position that it would not legally recognize CMNEA after the labor agreement expired unless CMNEA obtained SBM certification before then.

9. CMNEA did not seek SBM certification during the fall of 2018 or winter of 2019, because the District continued to recognize and bargain with it despite the lack of SBM certification, and because CMNEA’s parent affiliate, the Missouri National Education Association (“MNEA”), and other unions filed a lawsuit in St. Louis County on August 27, 2018 against the State and various municipal employers, challenging the constitutionality of HB 1413.

See Missouri Nat'l Educ. Ass'n, et al. v. Missouri Dep't of Labor, et al., Cause No. 18SL-CC03310 (St. Louis County Circuit Court).

10. The plaintiffs in the St. Louis County Circuit Court case filed a motion for preliminary injunction to enjoin the State from enforcing HB 1413 in its entirety.

11. The motion for preliminary injunction was argued on December 8, 2018, and on March 8, 2019, the St. Louis County Circuit Court issued its Findings of Fact, Conclusions of Law, and Preliminary Injunction finding that the plaintiffs were likely to succeed on the merits of their Constitutional claims, and that they established irreparable harm that outweighed any harm to defendants or the public from the issuance of a preliminary injunction. The Court found that the challenged portions of HB 1413 were inseverable from the remainder of the statute, and it preliminarily enjoined the State from administering or enforcing any provision of HB 1413 statewide¹.

12. Because of this preliminary injunction, the State Board of Mediation returned to operating under the labor law that existed prior to the effective date of HB1413. It has posted a notice on its website, informing the public that the St. Louis County injunction precludes it from conducting certification elections for employees like teachers who were excluded from coverage of the pre-August 28, 2018 Public Sector Labor Law. *See* <https://labor.mo.gov/SBM>.

13. The parties agree that the St. Louis County injunction has made it impossible for CMNEA to obtain a certification election from the State Board of Mediation since March 8 and before the District's unilateral deadline of July 1, 2019.

¹ A circuit court with jurisdiction over a state agency has the power to issue an injunction against the agency that has a statewide effect as is illustrated by the trial court's decision in *Weinschenk v. State of Missouri*, Case No.06AC-CC00656 (September 14, 2006). In that case, the Circuit Court of Cole County enjoined the Secretary of State and all local election authorities in the State from enforcing the statute that it found unconstitutional. *See*, <https://www.clearinghouse.net/chDocs/public/VR-MO-0061-0001.pdf>. The order of the Circuit Court was affirmed in its entirety by the Supreme Court in *Weinschenk v. State of Missouri*, 203 S.W.3d 201 (MO 2006)

14. Nevertheless, Defendant Columbia School District insisted on a bargaining proposal that CMNEA agree to obtain State Board of Mediation certification before July 1, 2019, or the labor agreement would be null and void.

15. The District also stated its intention to withdraw recognition of CMNEA as the exclusive bargaining representative of the District's teachers upon the expiration of the current labor agreement on June 30, 2019. Such an action would not only leave the District's teachers without a collective bargaining agreement and any ability to enforce terms and conditions of employment tentatively agreed to in bargaining, but would also leave them without a representative for grievances and other representational functions.

16. CMNEA refused to agree to the District's proposal because it incorporated a condition that would be impossible to satisfy and therefore, would automatically render the agreement null and void and unlawfully terminate its recognition as the collective bargaining representative. CMNEA offered some compromise proposals under which if the St. Louis County injunction were dissolved, it would seek SBM certification within a certain period of time. The District rejected these proposals.

17. Although the parties reached tentative agreement on a number of proposals, including salaries for the 2019-20 school year, they did not enter into a labor agreement, because CMNEA could not accept the proposal concerning State Board of Mediation certification by July 1, 2019. Instead, the District declared "impasse," meaning that the parties could not reach agreement.

18. Plaintiff CMNEA seeks a preliminary injunction, preventing the District from withdrawing recognition of it as the exclusive bargaining representative of teachers on July 1,

and requiring the District to return to the bargaining table and bargain with it in good faith during those negotiations and throughout the duration of the preliminary injunction.

19. The Court finds that HB 1413 and the St. Louis County Circuit Court's preliminary injunction against the State enforcing it creates an untenable "Catch-22" for Plaintiffs. CMNEA cannot get certified by the SBM, and the District will not continue to recognize CMNEA unless the State Board of Mediation certifies it.

20. The District overlooks that *Independence* holds that in the absence of a statutory vehicle for selecting a collective bargaining representative, Article I, Section 29 requires that an employer provide a collective bargaining framework. In the unique circumstances of this case, there is no such statutory vehicle for public school teachers as long as the State Board of Mediation is enjoined. Therefore, following *Independence*, the District must continue to recognize and bargain with the CMNEA as long as the State Board of Mediation is enjoined from enforcing HB1413.

21. The Court finds that CMNEA has demonstrated a likelihood of success on its claims and that its teachers have a Constitutional right to bargain collectively that cannot be exercised unless the District continues to recognize and bargain with CMNEA while the St. Louis County injunction is in effect.

22. The Court finds that CMNEA has demonstrated irreparable harm, and that the harm to the employees it represents outweighs the harm to the District and to the public if this Court were to deny a preliminary injunction.

ACCORDINGLY,

A. It is ORDERED AND DECREED that during the period from the date of this Order until the earlier of (1) the dissolution of any injunction preventing the State of Missouri's

State Board of Mediation or any other agency of the State from enforcing or implementing HB 1413; or (2) the effective date of a final judgment of the Missouri Supreme Court in the St. Louis County Circuit Court case (No. 18SL-CC03310), Defendant Columbia School District No. 93 is preliminarily enjoined from withdrawing recognition from Plaintiff CMNEA, the exclusive collective bargaining representative of the District's teachers; and

B. It is further ORDERED AND DECREED that the District shall return to the bargaining table with CMNEA, bargain in good faith for a labor agreement for 2019-2020 school year, and continue bargaining in good faith throughout the duration of this preliminary injunction; and

C. It is further ORDERED AND DECREED that within a reasonable period of time from the earlier of the events in paragraph A, this Court shall set this case for a hearing to determine the impact of intervening events on this case and what, if any, further proceedings or relief are warranted.

D. It is further ORDERED AND DECREED that Plaintiffs shall post a bond of \$100.00 within 5 days of the date of this Order.

June 21, 2019
Date

Jodie Capshaw Asel
Hon. Jodie Capshaw Asel

COURT SEAL OF



BOONE COUNTY